**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

***CIVIL MISC. NO.10915 of 2009 and***
***CIVIL WRIT PETITION NO.15883 of 2004***
*DATE OF DECISION: AUGUST 26 , 2010*

M/s Barnala Textile, Ludhiana

.....Petitioner

VERSUS

The Presiding Officer, Labour Court, Ludhiana and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH**

PRESENT: Mr.Gurdeep Singh, Advocate,
for the petitioner.

Mr. M.K. Bhatnagar, Advocate,
for respondent No.3.

****

*RANJIT SINGH, J.*

M/s Barnala Textile has filed this writ petition challenging the award passed by the Labour Court, Ludhiana on 13.3.2002, which was published on 9.8.2002 on the ground that the same is an ex parte award.

Respondent No.3 workman joined as Weaver with the petitioner-management. As per the averment, respondent No.3-workman had worked for a few months only and thereafter, taking advance did not report for duty. As per the petitioner, this amounted

to abandonment of service.

Respondent No.3-workman sought reference of the dispute of his termination from service and the dispute was referred to Labour Court Ludhiana. Labour Court, has passed an ex parte award on 13.3.2002, which was published on 9.8.2002. After more than one year, respondent No.3-workman filed an application for payment of back wages under Section 33-C (1) of the Industrial Disputes Act, 1947(in short 'the Act') and never approached the petitioner for reinstatement into service.

The petitioner-management has filed the present writ petition alleging that respondent No.3-workman is only interested in extracting money from the petitioner and is not interested in service. It is further stated that the petitioner had received a notice from the office of respondent No.2 to appear before him to make payment of back wages in terms of the award referred to above. Having learnt about the ex parte award, the petitioner filed the present writ petition. The writ petition was admitted on 3.3.2006 and is pending adjudication before this Court.

Respondent No.3-workman has filed an application on 7.7.2009 in which notice was issued by this Court on 10.7.2009. When this application came up for hearing before this Court on 5.7.2010, counsel for the petitioner-Management made a statement before this Court that the Management is prepared to take respondent No.3-workman back in service. The direction, therefore, was issued to respondent No.3-workman to join duty on 25.8.2010. When the case is taken up today, it is pointed out that respondent

No.3 workman has not reported back for duty. Counsel appearing for the said respondent says that this application may be dismissed as not pressed as the respondent-workman is not in contact with the counsel.

It appears that averment made in the petition that the respondent No.3-workman is only interested in extracting money from the petitioner, is well made out. A litigating party has to act fairly before a court of law. When it is noticed that a party has approached the court of law with oblique motive, relief can be denied. If respondent No.3-workman is really interested in work, he could not have filed this application and then backed out to remain incommunicado even with his counsel. Obviously, inference is that he is working somewhere else and is not interested in joining the duties. The prayer made for grant of back wages under Section 17-B of the Act, thus, is only to extract money. The workman has, thus, not approached the Court with clean hands. The application, therefore, is declined. Rather case is made out to take up the main case for decision.

It is noticed that the award impugned in the writ petition is an ex parte award. The case set up by the petitioner-Management is that it was proceeded ex parte simply on the basis of presumption of service of notice. The order passed by the Labour court in this regard has been reproduced in the writ petition and it is as under:-

> “Notice was sent to the respondents through registered post vide postal receipt no.000026986

dated 27.11.2001 for it appearance for today, but the same has not been received back as undelivered. Since then the period of more than 30 days has been lapsed. So it is presumed that the notice has been delivered to the respondents and as such the service is considered to be sufficient. Case called many times. None has put in appearance on behalf of the respondent. Accordingly, the respondent is proceeded against ex parte. For ex parte evidence of the workman to come up on 13.3.2002."

It is seen that notice, which was issued to the petitioner-Management, had not been received back as undelivered. Accordingly, the service was presumed on the petitioner concern as 30 days had expired. Accordingly, the petitioner was proceeded ex parte leading to passing of the impugned award. It is, thus, clear that the service on the petitioner-Management was not effected properly and it was proceeded against ex parte on the basis of presumption of service. The claims are generally required to be adjudicated on merits. The parties are entitled to adjudication of lis on merits and passing of the award on technical ground, is not a fair manner of deciding a lis.

The impugned award, therefore, would call for interference and is set aside. The case is remanded back to the Labour Court to decide the reference on merits, in accordance with law. Parties through their counsel are directed to appear before the

Labour Court on 21.9.2010.

The writ petition is, accordingly, disposed of.

***August 26 , 2010*** ***( RANJIT SINGH )***
***monika*** ***JUDGE***